

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

PROGRESSIVE CASUALTY INSURANCE. CO.,)

Plaintiff,)

vs.)

GEORGE A. LUNA,)

Defendant.)

Case No. 05-cv-4194-JPG

MEMORANDUM AND ORDER

This matter comes before the Court for determination of the proper amount of the judgment to be entered in this case. In an order of June 7, 2007, the Court dismissed Counts II, III and IV. It further determined that before it could properly resolve Count I it would need to know the total amount of premiums Progressive received from Luna for the policy so it could put the parties back into the same positions they had been in before the policy was issued. *See Puskar v. Hughes*, 533 N.E.2d 962, 966 (Ill. App. Ct. 1989). The evidence at trial established that Progressive paid Luna \$12,138 for the shed fire of December 2, 2004, and Progressive has submitted an affidavit stating that Luna had paid Progressive \$610.28 in premiums for the policy at issue. Luna has not objected to Progressive's affidavit, so the Court finds that he has waived any objection to the representations contained therein. Thus, Progressive is entitled to rescission of the policy and a judgment on Count I in the amount of \$11,527.72, and the Court **DIRECTS** the Clerk of Court to enter judgment accordingly.

IT IS SO ORDERED.

DATED: July 13, 2007

s/ J. Phil Gilbert

J. PHIL GILBERT
DISTRICT JUDGE